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In the

Supreme Court of the United States

October Term, 1946.

No. 431

ARTHUR L. BELL,

Petitioner,

vs.

THE SUPERIOR COURT, LOS ANGELES COUNTY, STATE OF CALIFORNIA,

Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

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THE SUPERIOR COURT, LOS ANGELES COUNTY, STATE OF CALIFORNIA,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Summary Statement of the Matter Involved.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Trustee and spiritual head of Christ Church of the Golden Rule, a church organization, as a California non-profit corporation, was adjudged guilty of contempt by the Superior Court of Los Angeles County, State of California; he was given a three (3) day jail sentence, as well as fined FIVE HUNDRED ($500.00) dollars. [R. 158.]

The petitioner sought a review of the judgment in the District Court of Appeal of the State of California, Sec-

ond Appellate District (a California intermediate court of appeal); to no avail.[1]

Thereupon, the petitioner sought further redress in the California courts, as provided by California court procedure, by a timely filing of a "Petition for Hearing" in the Supreme Court of California, California's court of last resort. The Supreme Court denied that petition; that Court, too, wrote no opinion.[2] In both these California appellate courts, the petitioner urged (as he does in this Petition) that the judgment against him deprives him of liberty without due process of law, in violation of the due process clause of the Fourteenth Amendment;[3] as well

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[1]The District Court of Appeal denied the petitioner's "Petition for Writ of Review" without opinion or comment (Petition for Hearing p. 15); reported in 73 A. C. A. No. 8. Minute, p. 2.

Under California procedure, the Petition for Writ of Review is the appropriate procedure to secure a review, by the California appellate courts, of a judgment of a California trial court, adjudging one guilty of contempt.

That procedure was followed in *Bridges v. Superior Court,* 14 Cal. (2d) 464, and *Times-Mirror Co. v. Superior Court,* 15 Cal. (2d) 99, in which cases this Court granted certiorari and reversed the judgments, *Bridges v. California,* 314 U. S. 252.

California decisions to the effect that the Petition for Review is the proper state procedure include:

Redlands v. Superior Court, 20 Cal. (2d) 348;
Pennell v. Superior Court, 87 Cal. App. 375;
Platnauer v. Superior Court, 32 Cal. App. 463;
Taylor v. Superior Court, 20 Cal. (2d) 244.

[2]Petition for Hearing p. 16; reported in 28 A. C. No. 8, p. 302; the action of the California Supreme Court was on June 3, 1946.

[3]Petition for Review in District Court of Appeal (p. 2). Petition for Hearing in California Supreme Court (p. 2).

as of freedom of religion in violation of the First and Fourteenth Amendments.[4]

The petitioner was charged with having conspired with others, to conceal records and properties from a state Receiver, appointed by the Superior Court of Los Angeles County, to take charge of the affairs of the Church. [R. 22.]

Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, Sec. 237(b), as amended.

Questions Presented.

Does a judgment of contempt of a state court offend federal due process, when the order which the petitioner is charged with violating is made without notice or hearing; and when, additionally, the petitioner has been convicted without a charge?

Does the judgment also abridge freedom of religion?

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[4]Petition for Review in District Court of Appeal (p. 2); Petition for Hearing in California Supreme Court (p. 2). The petitioner urged that the judgment violated the due process clause of the California State Constitution, as well as other California state constitutional guarantees. These grounds are, of course, not urged herein.

Reasons Relied Upon for the Allowance of the Writ.

1. THE APPOINTMENT BY THE SUPERIOR COURT BELOW OF THE EX PARTE RECEIVER WITHOUT NOTICE OR HEARING OFFENDS FEDERAL DUE PROCESS.[5]

As appears in *Holden v. Hardy* (1897), 169 U. S. 366, 389, due process includes "certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard, as that no man shall be condemned in his person and property without due notice and an opportunity of being heard in his defense." (Italics ours.) Or as stated by Justice Cardozo in *Palko v. Conn.*, 302 U. S. 319, 327: "Fundamental too in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after trial."

2. THE PETITIONER WAS CONVICTED UPON A CHARGE NOT MADE. THIS VIOLATES FEDERAL DUE PROCESS.

"Conviction upon a charge not made would be a sheer denial of due process."

De Jonge v. Oregon (1936), 299 U. S. 353, 362.

See also:

Schneiderman v. United States (1942), 320 U. S. 118, 160.

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[5]Under California law as under general law, one may not be adjudged guilty of contempt for violation of a void or unlawful order; thus, Section 1209, Subdivision 5, of the California Code of Civil Procedure, defines contempt as "disobedience of any lawful judgment, order, or process of the court."

See the following California cases:

Kreling v. Superior Court, 18 Cal. (2d) 884, 885;
Ex parte Clarke, 126 Cal. 235;
Andrews v. Superior Court, 103 Cal. App. 360;
In re Carroll, 135 Cal. App. 672, 677;
In re Ochoa, 50 Cal. App. (2d) 457.

3. JAILING THE SPIRITUAL HEAD OF A HETERODOX AND UNPOPULAR RELIGIOUS GROUP FOR HAVING DISOBEYED AN ORDER OF A STATE COURT, WHICH ORDER IS IN VIOLATION OF FEDERAL DUE PROCESS WOULD SEEM EFFECTUALLY TO DENY THE FREE EXERCISE OF RELIGION.

Instead of according to Christ Church of the Golden Rule and to the petitioner as its head, that "priority" of status, and "preferred position"[6] that this Court has accorded, to the exercise of freedom of religion, the California courts, unless this Court now intervenes, have assigned the petitioner to a California jail.

Conclusion.

Wherefore, your petitioner prays that this Court issue a Writ of Certiorari to the Supreme Court of the State of California; and that the judgment of the California Supreme Court be reversed; and furthermore that the judgment of the Superior Court of the State of California in and for the County of Los Angeles below be reversed.

A. L. WIRIN and
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By A. L. WIRIN,
Attorneys for Petitioner.

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[6] *Marsh v. Alabama*, 326 U. S. 501, 509; *cf.* also *Thomas v. Collins*, 323 U. S. 516, 530 (1945).

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

For a statement showing the disposition of the instant case by the courts below, the basis on which the jurisdiction of this Court is claimed, the questions presented, and a statement of the case, reference is here made to the foregoing Petition for Writ of Certiorari.

Specifications of Errors.

The judgment of the Court below should be reversed for the following reasons:

I.

THE PETITIONER WAS REMOVED AS TRUSTEE, AND THE STATE RECEIVER WAS APPOINTED, WITHOUT NOTICE OR HEARING. THIS ORDER WAS ACCORDINGLY VOID, BECAUSE IN CONTRAVENTION OF FEDERAL DUE PROCESS.

II.

THE PETITIONER WAS CONVICTED ON A CHARGE NOT MADE; HE WAS ACQUITTED OF THE OFFENSES CHARGED.

ARGUMENT.

I.

The Petitioner Was Removed as Trustee, and the State Receiver Was Appointed, Without Notice or Hearing. This Order Was Accordingly Void, Because in Contravention of Federal Due Process.

By a stroke of the pen, the Superior Court below without notice to the petitioner, to the Church, or to anyone else, removed the petitioner as Trustee of the Church, and took away from the Church and from its officers, all of its properties. [R. 22, 24.]

The *ex parte* order was made solely upon a complaint and two affidavits; no oral or documentary evidence was taken.

The complaint [R. 2, 19] verified by the Attorney General of California (who could not possibly have had any personal knowledge of the matters set forth in the complaint) abounds in suspicions, inferences and conclusions; it is lacking in factual support.

Thus, neither the complaint nor the supporting affidavits expressly recite that the petitioner had taken any money or property, or converted any money or property to his own use. The complaint merely alleges [R. 12, 13, 14, 15] the pleader's conclusion that unless restrained, the petitioner would convert certain properties; and this allegation is on "information and belief."

Nowhere in the complaint is there any allegation of fraud committed by the petitioner or anyone else.

The two meager affidavits filed in support of the application of the *ex parte* receiver contains no substantive factual recitals. The affidavit by Charles H. Manaugh re-

cites "fears," not facts—a fear that the petitioner would sell certain properties and the proceeds would be wasted. [R. 20.] The second affidavit, by Warren Olney III, deputy prosecutor in the case, recites, "on information and belief," that the petitioner would flee the State of California, and take with him properties of the Church. No basis for these beliefs and fears appears anywhere. [Appendix to Petition for Writ of Review in District Court of Appeal.

It was upon such a meager factual showing *without notice or hearing* that the Los Angeles County Superior Court, removed the petitioner as Trustee of the Church, and appointed a Receiver to take over all of its properties and records, and to administer its affairs.

In much the similar vein as in *Holden v. Hardy, supra,* and *Palko v. Conn, supra,* is the case of *Railroad Commission v. Pacific Gas and Electric Company* (1937), 302 U. S. 388, 393, where this Court said:

> "The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement."

This right to a fair hearing upon notice has been deemed by the United States Supreme Court to constitute "an inexorable safeguard." *Morgan v. United States* (1937), 304 U. S. 1, 15.

Brannon in his work Fourteenth Amendment at page 140 recites the general definition of "due process" as enunciated by Daniel Webster, in the famous *Dartmouth College* case, 4 Wheat. 581, that:

> "By the law of the land is most clearly intended the general law, which hears before it condemns; which

proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of general rules that govern society."

Cf. also:

Powell v. Alabama, 287 U. S. 156, 168 (1932).

II.

The Petitioner Was Convicted on a Charge Not Made; He Was Acquitted of the Offenses Charged.

a. THE PETITIONER WAS CHARGED WITH THE OFFENSE OF CONSPIRING TO DISOBEY AN ORDER OF THE SUPERIOR COURT; OF THAT CHARGE HE WAS ACQUITTED.

The petitioner, in the "Affidavit" which instituted, and which constitutes, the alleged basis for the contempt proceedings, was charged with having "wilfully conspired," and confederated with others to hide and conceal the properties of the church corporation from the Receiver. [R. 34.] Of that charge he was acquitted, the trial court declaring, "the evidence offered and received herein fails to establish a conspiracy as alleged." [R. 148.]

The affidavit in re contempt clearly undertakes to charge the petitioner with a conspiracy. Thus the affidavit, after first alleging the conspiracy [R. 34] recites that all of the alleged acts of the petitioner complained of in the affidavit were "pursuant to the aforementioned conspiracy" [R. 34] and "in furtherance of the said conspiracy." [R. 34.]

Then, in the "first count" there is a recital that the petitioner "neglected, failed and refused to surrender the property and effects of the church corporation" to the Receiver. [R. 36.]

All of the remaining counts in the affidavit, from count 2 to count 36, incorporate the allegations appearing in the first count, except that each count following the first count recites a different day and date, upon which the petitioner is charged with having committed an act pursuant to said conspiracy.

The affidavit in its entirety, accordingly, is to be construed as charging a "conspiracy," with the various "counts" constituting the alleged overt acts committed by the petitioner pursuant to said conspiracy. Of the charge of conspiracy, the petitioner was exonerated. The trial judge stated:

> "The evidence offered and received herein fails to establish a conspiracy as alleged." [R. 148.]

b. In Any Event the Petitioner Was Charged With Having Refused to Surrender Books and Property to the Receiver; of That Charge He Was Also Acquitted.

If the affidavit is construed as alleging 36 separate offenses, it charges, in effect, that the petitioner's alleged contempt consisted of a violation of the order of the Superior Court appointing a receiver by a refusal to turn over the properties and books of the Church to said receiver. Of all of these charges, the petitioner, again, was by the Superior Court, exonerated. [R. 147.]

Thus the trial judge took the view that there was no violation of the order by an alleged refusal to deliver

possession to the Receiver until after a demand for said possession was made by the Receiver; and that such demand was not made by the Receiver until the evening of October 31, 1945. [R. 147.] On November 1, 1945, a bankruptcy proceeding was instituted by the Church. With respect to the period of time between the demand upon the petitioner, and the bankruptcy proceeding [R. 154] the trial judge ruled that "there was no practical opportunity to deliver possession by respondent and no act of respondent is shown in evidence which could be characterized as refusal to surrender possession to the receiver after such demand and that the respondent was, therefore, not guilty of contempt for such failure." Since, "after November 1 the Bankruptcy Court claimed possession" [R. 155] the trial court also exonerated the petitioner of any alleged contempt for any acts, after November 1, 1945.

Having thus acquitted the petitioner of the charges lodged against him in the affidavit, the trial judge nonetheless found the petitioner guilty of contempt "by reason of unlawful interference" with the receivership proceedings herein [R. 155] by means of distribution of "certain instructions." [R. 64.]

The trial judge seems to have posited his judgment of contempt very largely, if not entirely, because of his interpretation of a document prepared and caused to be circulated by the petitioner to members of the Church. [Exhibit "C" attached to Affidavit, R. 64.]

According to the trial judge:

"These 'instructions' among other things, order the members of the church to give no information to any person, not a member, seeking access to property or books of the corporation, but to tell such persons that the church rules require members to refer such persons to the officers of the church; also to tell such persons that members are not permitted to discuss or give information as to church business or property without the Trustee's permission; that such member cannot make any books or property available to such person or provide any information; to tell such persons that if they break into church property they will be guilty of theft and that efforts would be made to arrest them for trespassing on private property, should they lay hands on and take anything belonging to the church; that after telling them the above to ignore them as not existing, but to watch them carefully. The members were therein further instructed not to help any person showing authority to lay hands on church property or records, but 'you naturally will not interfere with any recognized operation of the law,' other than to 'mind his own business and keep his own mouth shut.'

"Members were therein further instructed to tell such persons that all church properties and records are under the direct supervision of the Church Trustee, and that it would be necessary to serve papers directly upon him to gain access to property or records, and that no member of the church had authority to make the same available to others, no matter

what kind of papers might be served on him." (Italics ours.)

The "instructions" thus on their face expressly direct the members of the Church not to interfere with the receivership. However, the trial court construed an instruction not to interfere, into an order to interfere. As explained by the petitioner, this was his intent:

> ". . . The authority to transact all business of the corporation is placed in the hands of the officials of the corporation, and a member jeopardizes his membership in our church if he takes any action that has to do with the transference of church property or records without specific permission, describing the property or action for the officials of our church. . . . There wasn't the slightest intention of interfering with the transference of property to the receiver." [R. 217, 218.]

> "The receiver took possession, and we did not resist at any time. I thought that any voluntary cooperation on the part of our people might be an approval of his actions, which I considered to be a source of very serious loss to our group. I felt he was making many mistakes, and we would take any steps in accordance with the law, but we would not voluntarily go out of our way to resist." [R. 219.]

The petitioner claims to be the victim of governmental persecution because of the unpopularity of the religious views entertained by the members of Christ Church of the Golden Rule. He and a number of his associates have

been convicted for violating the war-time Espionage Act, and their appeal is now pending in the Ninth Circuit Court of Appeals, No. 10432. He asserts that he, and others of his group, have been made the victims of "unreasonable" and unconscionable searches and seizures, and this Court has already acknowledged that this claim is not entirely without support, when it stated in *Bell v. Hood*, 90 L. Ed. (Adv. Op.) 758, 761:

> "The Circuit Court of Appeals correctly stated that 'the complaint states strong cases, and if the allegations have any foundation in truth, the plaintiffs' legal rights have been ruthlessly violated.' "

Conclusion.

In the light of these circumstances, it appears that, in the instant matter, the petitioner has been deprived of federal due process by a judgment of a state court.

This Court should grant certiorari, and order the judgment below reversed.

Respectfully submitted,

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